

REPLY UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
TECHNOLOGY CENTER 1773

REMARKS

Claims 104, 107, 109-113, 115-117, 127-130, and 132-133 are pending in this application. Claims 1-103, 105-106, 108, 114, 118-126, 131, and 134 have been canceled. Claims 104, 107, 109-113, 115-117 and 127-134 stand rejected as being based on a defective reissue oath. Claims 131 and 134 stand rejected under §102(b) as being anticipated by applicant's disclosure of the prior art "Glucose Elite" product. For the reasons set forth below, reconsideration of the application is respectfully requested.

1. Interview Summary

The Applicant wishes to thank Examiner Alexander for the telephonic interview of January 20, 2011, concerning the above-identified application. At the interview, proposed claim amendments to claims 131 and 134 were presented. With the enclosed Response, Applicant hereby cancels claims 131 and 134.

2. Amendment to the Specification

Applicant hereby amends the specification to include a cross reference to the other reissue applications as required by MPEP § 1451. "37 CFR 1.177(a) requires that all multiple reissue applications resulting from a single patent must include as the first sentence of their respective specifications a cross reference to the other reissue application(s). Accordingly, the first sentence of each reissue specification must provide notice stating that more than one reissue application has been filed, and it must identify each of the reissue applications and their relationship within the family of reissue applications, and to the original patent."

3. Rejections Based on the Reissue Oath/Declaration

The application remains rejected for the following reasons:

- The declarations have not been signed by "all" of the inventors.
- Claims 104, 107, 109-113, 115-117, and 127-134 are rejected as being based upon a defective reissue oath under 35 U.S.C. § 251.

Applicant hereby submits with the present Response to Final Office Action reissue declarations that are signed by all of the inventors for the present application. Applicant notes

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the previously submitted reissue declaration was signed by two of the three inventors. Applicant notes the new reissue declaration has been signed by all three inventors. Applicant submits that the application is now in condition for allowance.

The present reissue application is a divisional reissue application from a patent which issued with ten named inventors. Applicant submits the present reissue application claims priority to U.S. Patent Application 10/008,788 which was filed to correct an error in inventorship in the original patent along with other errors. One error upon which U.S. Patent Application 10/008,788 is based is that persons were being incorrectly named in an issued patent as the inventors and that such error arose without any deceptive intention on the part of the applicant. Since the present divisional reissue application was a result of a restriction requirement in the parent reissue application, applicant asserts the error in inventorship in the original patent is also an error in the present divisional reissue application.

Therefore, at the time of filing the present divisional reissue application, it was determined that the following three persons were inventors of the subject matter claimed herein: William F. Crismore, Nigel Surridge, and Daniel R. McMinn. Applicant submits that no declaration is required to be signed by the seven persons identified on the original patent who have been determined not to be inventors of the subject matter claimed herein. 37 CFR 1.172(a) indicates that a reissue declaration must be made by the inventors for the case. However, MPEP 1410.01 notes that:

“If one or more inventors are being deleted in a reissue application, an oath or declaration must be supplied over the signatures of the remaining inventors.”

Applicant submits that there is thus no requirement for signature by any person not identified as an inventor for the case.

Further MPEP 1412.01 states:

“Where a reissue application seeks to correct inventorship in the patent and the inventors are required to sign the reissue oath or declaration (rather than an assignee of the entire interest under 37 CFR 1.172) due to a broadening of any claims of the original patent, the correct inventive entity must sign the reissue oath or declaration.... Where an inventor is being deleted in a reissue application to correct inventorship in a patent and the inventors are required to sign the oath or declaration due to a broadening of any claims of the original patent, the inventor being deleted need not sign the reissue oath or declaration. The reissue oath or declaration must be signed by the correct inventive entity. For example, a reissue application is filed to correct inventorship from inventors A, B, and C

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(listed as inventors on the patent) to inventors A and B. Inventor C is being deleted as a named inventor. In such a case, A and B are the correct inventors, and accordingly, inventors A and B must sign the reissue oath or declaration but inventor C need not sign the reissue oath or declaration.”

Applicant does appreciate, however, that the record must be made clear as to the intent regarding the identification of inventors. By analogy, 37 CFR 1.63(d)(1) indicates that an executed declaration is not required in a divisional application under certain circumstances, and 1.63(2) further states that:

“(2) The copy of the executed oath or declaration submitted under this paragraph for a continuation or divisional application must be accompanied by a statement requesting the deletion of the name or names of the person or persons who are not inventors in the continuation or divisional application.”

While this provision does not apply directly to the present application, it does suggest that the deletion of inventors in a reissue case can be accomplished by a statement to that effect.

Accordingly, as this case presents a similar situation, applicant hereby submits the following statement for this case:

Applicant hereby requests the deletion, from the listing of inventors, of the names of the following persons who are not inventors in this divisional reissue application: Richard J. Bodensteiner, Eric R. Diebold, R. Dale Delk, David W. Burke, Jiaxiang Jason Ho, Robert Kitchel Earl, and Brian A. Heald.

Applicant believes that the entry of this statement into the record explains the absence of executed declarations from these seven persons, and obviates the rejection made in this regard.

4. The Rejections Based on § 102

Claims 131 and 134 stand rejected under §102(b) as being anticipated by applicant’s disclosure of the prior art “Glucose Elite” product. Applicant hereby cancels claims 131 and 134.

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5. Conclusion

In view of the above, it is submitted that the present application is now in condition for allowance, and the Examiner is requested to pass the case to issue. If the Examiner should have any comments or suggestions to help speed the prosecution of this application, the Examiner is requested to contact the undersigned representative by telephone.

Respectfully submitted,

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